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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/900,674
Filing Date: July 06, 2001
Appellant(s): NYHAN ET AL.

_____
Mark Joy
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/22/11 appealing from the Office action

mailed 10/20/10.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appeal 2009-012680 decided 6/18/10, filed 6/22/10.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application: 1, 3, 5-7, 9-17, 21 and 26-33. Claims 8 and 22-24 are objected to.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of

rejection to be reviewed on appeal. Every ground of rejection set forth in the Office

action from which the appeal is taken (as modified by any advisory actions) is being

maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are

provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in

the Appendix to the appellant's brief.

(8) Evidence Relied Upon

US 2002/0128898	Smith, Jr. et al	September 2002
USPN 6,728,755	de Ment et al	April 2004
USPN 6,901,424	Winn	May 2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3, 5-7, 11-17, 26-27, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, Jr. et al. (U.S. 2002/0128898) in view of de Ment et al. (U.S. 6,728,755).

As per claim 1, Smith, Jr., et al. teaches a method for conducting an on-line survey in association with presentation of an on-line advertisement by a browser client, the method comprising:

Receiving by a user computer hosting a browser client a web page configured to display an on-line advertisement (See figure 2A, paragraphs 54-55, 58, 118, 145-6, which discloses a browser client and a server, wherein an advertisement banner is served to the client);

wherein acceptance of the on-line survey solicitation by the user results in presentation of an on-line survey via the browser client (i.e., by selecting a particular banner, a network user may be presented with a survey, ¶ 0124);

Smith, Jr. et al does not explicitly disclose Issuing by the user computer in association with processing the received web page a request to an ad server for a block of data comprising computer-readable instructions for presenting the on-line advertisement via the browser client; sending, by the server in response to the issued request from the user computer, the block of data including computer-readable instructions for presenting the on-line advertisement and the block of data further including additional computer readable instructions that facilitate decision-

making steps for determining whether to present an on-line solicitation via the browser client.

de Ment discloses a pop-up survey routine which begins in response to a user invoking a web tool, which response, according to de Ment, could correspond to any action desired by a designer, (Col. 3, 11. 10-14), wherein "any action" commenced on the part of the user in de Ment, constitutes issuing a request as required by the claims. In addition, de Ment discloses a routine which checks for a cookie corresponding to the pop-up survey routine to specifically determine when the user, if at all, was last presented with a pop-up survey, wherein the routine determines whether or not the user has seen the particular survey within the last six months. This involves initially checking to see whether the user has a cookie corresponding to the pop-up survey routine. If no such cookie exists, then the routine assumes that the user has not been presented with the survey in the last six months. On the other hand, if such a cookie is stored within the user's system, the routine checks its contents to specifically determine when the user, if at all, was last presented with a pop-up survey. Either way, if it is determined that the user has been presented with the survey in the last six months, then again, the routine returns a value at step 210 indicating that the survey is not to be popped. Conversely, if it is determined that the user has not received the survey in the last six months, then the routine proceeds to decision step 218. (Col. 4, lines 42-62).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include Issuing by the user computer in association

with processing the received web page a request to an ad server for a block of data

comprising computer-readable instructions for presenting the on-line advertisement

via the browser client, sending, by the server in response to the issued request from

the user computer the block of data including computer-readable instructions for

presenting the originally accessed on-line advertisement and the block of data

further including additional computer readable instructions that facilitate decision-

making steps for determining whether to present an on-line solicitation via the

browser client in Smith, Jr. et al, as seen in de Ment, since the claimed invention is

merely a combination of old elements, and in the combination each element merely

would have performed the same function as it did separately, and one of ordinary

skill in the art would have recognized that the results of the combination were

predictable.

In addition, while Smith, Jr. et al. discloses using cookie data to indicate previous

solicitations (paragraph 129), Smith, Jr., et al. does not expressly disclose using this

cookie data to determine if the user should be presented the solicitation by

accessing, on the user computer, a timestamp value indicative of a period of time

that has passed since the online survey solicitation was previously presented by the

browser client; and executing the additional computer-readable instructions if the

timestamp value indicates passage of a period of time satisfying a prescribed wait

period between consecutive presentations of the one line survey solicitation by the

browser client on the user computer.

de Ment discloses accessing and analyzing cookie data of the user computer

indicative of a period of time that has passed since the on-line survey solicitation

was previously presented by a browser client and executing the additional computer

readable instructions if the cookie values indicate passage of a period of time

satisfying the prescribed wait period between consecutive presentations of the on-

line survey solicitation by the browser client on the user computer (See figure 3B,

column 3, lines 25-35, column 4, lines 40-63, wherein cookie data is requested and

analyzed to see timing (i.e. has the user taken the survey within the last six months).

The timing in the cookie data is used to determine an elapsed time since the

previous presentation and if the elapsed time exceeds a time period corresponding

to the time parameter, the solicitation may be presented). Moreover, according to de

Ment a timestamp can be used to ascertain whether a survey was taken (Col. 4,

lines 42-62).

However, while de Ment does not expressly disclose that the cookie data

includes a timestamp, both de Ment and Smith Jr., et al. disclose presenting a

survey solicitation to a user via a browser client based on presentation criteria using

cookie data to indicate previous solicitations. Smith Jr., et al. specifically discloses

screening a user to ensure that that user is an appropriate candidate to be surveyed,

such as by using cookie data. De Ment discloses utilizing on-line surveys in order to

characterize users and gain knowledge from these users, as well as utilizing cookies

and timeframe values to determine whether or not to serve a survey to a user. It

would have been obvious to one of ordinary skill in the art at the time of the invention

to include the timeframes of de Ment in the survey screening criteria of Smith Jr., et al. since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Further, both de Ment and Smith, Jr. et al., disclose the use of cookie data. De Ment discloses utilizing on-line surveys in order to characterize users and gain knowledge from these users, as well as utilizing cookies and timeframe values to determine whether or not to serve a survey to a user. Examiner takes official notice that it is old and well known in the art that cookie data includes timestamps which indicate the time a user of a computer undertook an action. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include timestamps in the cookie data of de Ment, since using old and well known cookie timestamps in the cookie data of de Ment (this cookie data indicative of timeframe) would achieve the predictable results of measuring the timeframe of user activity.

As per claim 3, Smith, Jr., et al. discloses receiving cookie data from a browser client indicative of a previous presentation of the online survey solicitation (See paragraph 129).

As per claim 5, Smith, Jr. et al. teaches sending the block of data including the additional computer readable instructions to the browser client over a computer network (See figure 2A, paragraphs 54-55, 58, 118, 145-6, which discloses a browser client and a server, wherein an advertisement banner is served to the client.

See also paragraphs 123-6, 134, 151, and 155, which discloses distributing over a computer network).

As per claim 6, Smith, Jr. et al. discloses presenting the on-line survey solicitation thereby soliciting the user to take the on-line survey (See paragraphs 123-6, 134, 143-6, 151, and 155, wherein criteria about the user is used and the survey/solicitation is presented) as well as using cookie data to indicate that the on-line survey solicitation was presented by the browser client (see paragraph 129). However, Smith, Jr. et al. does not expressly disclose generating, in association with the presenting step, cookie data including the timestamp value to indicate that the online survey solicitation was presented by the browser client, and sending the generated cookie data over a computer network to the browser client.

De Ment discloses generating, in association with the presenting step, cookie data indicating that the online survey solicitation was presented by the browser client, and sending the generated cookie data over a computer network to the browser client (See figure 3B, column 3, lines 25-35, column 4, lines 40-63, wherein cookie data is requested and analyzed to see timing (i.e. has the user taken the survey within the last six months). The timing in the cookie data is used to determine an elapsed time since the previous presentation and if the elapsed time exceeds a time period corresponding to the time parameter, the solicitation may be presented). Moreover, de Ment discloses: at step 220, the user is provided with the opportunity to take the survey and at step 230, has the option to decline causing the routine to skip to the end (de Ment thus presents a solicitation rather than an

outright), and that the purpose of the pop-check routine is to determine whether or not the specific user should be presented with the option to take the pop-up survey (column 3, lines 28-41).

However, while de Ment does not expressly disclose that the cookie data includes a timestamp value, both de Ment and Smith Jr., et al. disclose presenting a survey solicitation to a user via a browser client based on presentation criteria using cookie data to indicate previous solicitations. Smith Jr., et al. specifically discloses screening a user to ensure that that user is an appropriate candidate to be surveyed, such as by using cookie data. De Ment discloses utilizing on-line surveys in order to characterize users and gain knowledge from these users, as well as utilizing cookies and timeframe values to determine whether or not to serve a survey to a user. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the timeframes of de Ment in the survey screening criteria of Smith Jr., et al, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Further, both de Ment and Smith, Jr. et al., disclose the use of cookie data. De Ment discloses utilizing on-line surveys in order to characterize users and gain knowledge from these users, as well as utilizing cookies and timeframe values to determine whether or not to serve a survey to a user. Examiner takes official notice that it is old and well known in the art that cookie data includes timestamps which

indicate the time a user of a computer undertook an action. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include timestamps in the cookie data of de Ment, since using old and well known cookie timestamps in the cookie data of de Ment (this cookie data indicative of timeframe) would achieve the predictable results of measuring the timeframe of user activity.

As per claim 7, Smith, Jr. et al. discloses executing the additional computer-readable instructions to perform steps of: referencing a frequency parameter that influences the frequency of presenting the on-line survey solicitations and determining whether or not to present the on-line survey via the browser client based, in part, on the frequency parameter (See paragraphs 129-130, which discloses the frequency with which the online survey is displayed (number of times per campaign, number of times per user, etc.).

As per claim 11, Smith, Jr. et al. discloses presenting an on-line survey solicitation and a link to the on-line survey (See paragraphs 123-6, 134, 143-6, 151, and 155). However, Smith, Jr. et al. does not expressly disclose and de Ment discloses presenting the on-line survey solicitation as a pop-up window and in response to activation of a link within the pop-up window, sending the on-line survey in the form of a web page to the browser client, the on-line survey comprising questions regarding a product or service advertised in the on-line advertisement (See column 2, lines 1-15 and 45-65, column 3, line 44-column 4, lines 15, column 5, lines 35-60, and figure 3B, wherein a pop-up window is displayed. The user clicks through to a survey concerning a service of the webpage).

Smith, Jr. et al. discloses presenting an on-line survey solicitation and a link to

the on-line survey. Pop-ups, as taught by de Ment, are well known in a web-

environment and are used in survey methods. Therefore, it would have been

obvious to one of ordinary skill in the art at the time of the invention to link to the

survey solicitation via a pop-up window, since the claimed invention is merely a

combination of old elements, and in the combination each element merely would

have performed the same function as it did separately, and one of ordinary skill in

the art would have recognized that the results of the combination were predictable.

As per claim 12, Smith, Jr. et al. discloses presenting an on-line survey

solicitation and a link to the on-line survey (See paragraphs 123-6, 134, 143-6, 151,

and 155). However, Smith, Jr. et al. does not expressly disclose and de Ment

discloses presenting the on-line survey solicitation as a pop-up window and in

response to activation of a link within the pop-up window, sending the on-line survey

in the form of a web page to the browser client, comprising questions regarding a

product or service advertised in the on-line advertisement (See column 2, lines 1-15

and 45-65, column 3, line 44-column 4, lines 15, column 5, lines 35-60, and figure

3B, wherein a pop-up window is displayed. The user clicks through to a survey

concerning a service of the webpage). However, de Ment does not expressly

disclose that the pop-up concerns a product or service that is not advertised in the

on-line advertisement.

Smith, Jr. et al. discloses presenting an on-line survey solicitation and a link to

the on-line survey. Pop-ups, as taught by de Ment, are well known in a web-

environment and are used in survey methods. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to link to the survey solicitation via a pop-up window, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Further, de Ment discloses that the user is provided an advertisement for a survey via a pop-window based on the user's use of a search tool. The questions following this original invitation include questions concerning general computer use and services (column 3, line 45-column 4, line 25). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include a general nature of the questions in the original pop-up, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claims 13 and 14 are substantially similar to claim 1 and are therefore rejected using the same art and rationale set forth above.

As per claim 15, Smith, Jr. et al. discloses wherein the one or more requested files comprise computer readable instructions for displaying the online advertisement and wherein the further instructions call a routine that decides whether or not to solicit the user to take the online survey based on a frequency parameter, the

frequency parameter being indicative of a probability that in response to the selectively modifying step, the online solicitation will be submitted for presenting to the browser (see paragraphs 129-130, wherein a routine checks frequency and whether or not the system is able to display the solicitation).

Claim 16 recites equivalent limitations to claim 11 and is therefore rejected using the same art and rationale applied above.

Claim 17 is substantially similar to claim 1 and is therefore rejected using the same art and rationale set forth above, as necessitated by amendment.

As per claim 26, Smith, Jr. et al. discloses wherein the advertisement service adds first computer readable instructions for invoking a decision routine to the advertisement data when consideration is to be given to sending the on-line survey solicitation to the computer (See paragraphs 123-6, 134, 143-6, 151, and 155).

As per claim 27, Smith, Jr. et al. teaches wherein the survey logic server provides first computer readable instructions to the ad server (See paragraphs 145-6, 148-51, 155, wherein the survey server interacts with the ad server).

As per claim 33, Smith, Jr. et al. teaches wherein the prescribed wait period is specified by a survey logic server (See paragraphs 129-130, 145-6, 151, 155).

Claims 9, 10, 21 and 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, Jr. et al. (U.S. 2002/0128898) in view of de Ment et al. (U.S. 6,728,755) and in further view of Winn (U.S. 6,901,424).

As per claim 9, Smith, Jr. et al. discloses wherein the online survey solicitation is

presented as part of a campaign, wherein the frequency parameter has a value that

is at least partially a function of an amount of time remaining in the campaign (See

paragraphs 129-130, which discloses the frequency with which the online survey is

displayed (number of times per campaign, number of times per user, etc.)).

However, neither Smith, Jr. et al., nor de Ment expressly disclose referencing a look-

up table that correlates a plurality of possible times remaining with corresponding

possible frequency values.

Winn discloses sampling rate and frequency algorithms/processes, and further

discloses soliciting users only once for a specific survey (See column 3, lines 45-65,

column 4, lines 10-20 and 30-41) and wherein the frequency parameter is

determined by referencing a look-up table (See column 3, lines 50-65, and column 4,

lines 29-40). Winn further discloses a marketing campaign (See column 4, lines 10-

20, which discloses a survey project).

Smith, Jr. et al. and de Ment are combinable for the reasons set forth above.

Further, Smith, Jr. et al. and Winn disclose systems for soliciting a user to take an

on-line survey and utilizing cookies and frequency values to determine whether or

not to serve a survey to a user. Winn specifically discloses using sampling rates,

frequency values, and frequency to determine whether to invite a user to take a

survey, as well as cookie data indicating whether or not the user has been

previously solicited. It would have been obvious to one of ordinary skill in the art at

the time of the invention to include time values associated with the campaign in

association with the frequency parameters of the survey, since the claimed invention
is merely a combination of old elements, and in the combination each element
merely would have performed the same function as it did separately, and one of
ordinary skill in the art would have recognized that the results of the combination
were predictable.

As per claim 10, neither Smith, Jr. et al. not de Ment disclose and Winn teaches
executing the additional computer-readable instructions to perform steps of:
generating a random number; determining whether the random number falls within a
set of numbers that correspond to a the frequency with which the on-line survey
solicitation is presented via browser clients; and presenting the online survey
solicitation based on the determining step (See column 4, lines 9-20 and 29-41,
which discloses random number generation in the context of frequency selections).

Smith, Jr. et al. and de Ment are combinable for the reasons set forth above.
Further, Smith, Jr. et al. and Winn disclose systems for soliciting a user to take an
on-line survey and utilizing cookies and frequency values to determine whether or
not to serve a survey to a user. Winn specifically discloses random number
generation in the context of frequency selections, as well as cookie data indicating
whether or not the user has been previously solicited. It would have been obvious to
one of ordinary skill in the art at the time of the invention to include random number
generation in the frequency parameters of Smith, Jr. et al, since the claimed
invention is merely a combination of old elements, and in the combination each
element merely would have performed the same function as it did separately, and

one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claims 21 and 28 recite substantially similar limitations to claims 10 and 10, respectively, and are therefore rejected using the same art and rationale set forth above.

As per claim 29, Smith, Jr. et al. teaches wherein the frequency parameter is specified by a survey logic server (See paragraphs 130, 145-6, 151, 155, which disclose frequency and survey servers).

As per claim 30, Smith, Jr. et al. discloses a frequency parameter associated with a survey campaign (See paragraphs 129-130). However, Smith, Jr. et al. does not expressly disclose, nor do de Ment nor Winn, disclose changing the frequency parameter during a survey campaign.

Smith Jr. et al. disclose defining and executing an advertisement and survey campaign wherein the campaign is designed by the survey client. It is old and well known to be able to edit a marketing or survey campaign in order to ensure that expected results are secured. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to edit the campaign of Smith, Jr., et al, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 31, Smith Jr. et al. teaches a survey logic server (See paragraphs 130, 145-6, 151, 155). However, neither Smith, Jr. et al. nor de Ment expressly discloses providing the random number.

Winn teaches generating a random number (See column 4, lines 9-20 and 29-41, which discloses random number generation in the context of frequency selections).

Smith, Jr. et al. and de Ment are combinable for the reasons set forth above. Further, Smith, Jr. et al. and Winn disclose systems for soliciting a user to take an on-line survey and utilizing cookies and frequency values to determine whether or not to serve a survey to a user. Winn specifically discloses random number generation in the context of frequency selections, as well as cookie data indicating whether or not the user has been previously solicited. It would have been obvious to one of ordinary skill in the art at the time of the invention to include random number generation in the frequency parameters of Smith, Jr. et al, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 32, Smith, Jr. et al. discloses using a URL by a browser on the user computer to contact the survey logic server (See at least paragraphs 143 and 146, wherein a URL is associated with the survey via a survey logic server). However, Smith, Jr. does not expressly disclose, nor does de Ment that the random number is

appended to a URL used by a browser on the user computer to contact the survey

logic server.

Winn teaches generating a random number; determining whether the random

number falls within a set of numbers that correspond to a the frequency with which

the on-line survey solicitation is presented via browser clients; and presenting the

online survey solicitation based on the determining step (See column 4, lines 9-20

and 29-41, which discloses random number generation in the context of frequency

selections). However, Winn does not expressly disclose that the random number is

appended to a URL used by a browser on the user computer to contact the survey

logic server.

Smith, Jr. et al. and de Ment are combinable for the reasons set forth above.

Further, Smith, Jr. et al. and Winn disclose systems for soliciting a user to take an

on-line survey and utilizing cookies and frequency values to determine whether or

not to serve a survey to a user. Winn specifically discloses random number

generation in the context of frequency selections. Further, Examiner takes official

notice that a URL includes numbers that indicate file locations to which the URL will

link. Therefore, it would have been obvious to one of ordinary skill in the art at the

time of the invention to include random number generation in the frequency

parameters of Smith, Jr. et al, since the claimed invention is merely a combination of

old elements, and in the combination each element merely would have performed

the same function as it did separately, and one of ordinary skill in the art would have

recognized that the results of the combination were predictable.

(10) Response to Argument

In the Appeal Brief, Appellant argues that 1) with respect to claim 1, neither

Smith nor de Ment disclose issuing, by the user computer in association with

processing the received web page, a request to an ad server, for a block of data

comprising computer- readable instructions for presenting the on-line advertisement

via the browser; sending, by the ad server in response to the issued request from

the user computer, the block of data including computer-readable instructions for

presenting the on-line advertisement and the block of data further including

additional computer-readable instructions that facilitate decision-making steps for

determining whether to present an on-line survey solicitation via the browser client,

wherein acceptance of the on-line survey solicitation by the user results in

presentation of an on-line survey via the browser client; accessing, on the user

computer, a timestamp value indicative of a period of time that has passed since the

on-line survey solicitation was previously presented by the browser client; and

executing the additional computer-readable instructions if the timestamp value

indicates passage of a period of time satisfying a prescribed wait period between

consecutive presentations of the on-line survey solicitation by the browser client on

the user computer, 2) with respect to claim 6, neither Smith nor de Ment discloses

storing a cookie indicating that a survey solicitation was presented on the user

computer, 3) with respect to claims 7 and 15, neither Smith nor de Ment disclose

"on-line survey solicitations" which are different from actual "surveys" completed by

users, 4) with respect to claim 11, neither Smith nor de Ment discloses linking the

survey questions to a product or service advertised in the on-line advertisement provided in the block of data downloaded from the ad server, 5) with respect to claim 17, neither Smith nor de Ment disclose initially downloaded web pages, and a subsequent request for an ad block by a user computer from an advertisement server, 6) with respect to claim 9, the Final Office Action does not identify any teaching in any of the three cited references directed to Appellants claimed element of changing a frequency parameter in accordance with an amount of time remaining in a campaign, and 7) with respect to claim 32, nowhere in the cited references is there a suggestion to append the randomly generated value to the URL address identifying the location of the sender of a survey request to the survey logic server that ultimately determines whether to provide the survey to the requesting user computer.

As an initial matter, the Examiner respectfully disagrees with all Appellants arguments, and notes that Appellant appears to have reargued points previously decided by the Board in Appeal 2009-012680. Specifically, arguments 1, 2, 3, 4 and 7 seem to have been decided by the Board on 6/18/10, wherein the Examiner was affirmed.

With respect to Argument 1, the Examiner respectfully disagrees. de Ment discloses a pop-up survey routine which begins in response to a user invoking a web tool, which response, according to de Ment, could correspond to any action desired by a designer, (Col. 3, 11. 10-14), wherein "any action" commenced on the part of the user in de Ment, constitutes issuing a request as required by the claims. In

addition, de Ment discloses a routine which checks for a cookie corresponding to the

pop-up survey routine to specifically determine when the user, if at all, was last

presented with a pop-up survey, wherein the routine determines whether or not the

user has seen the particular survey within the last six months. This involves initially

checking to see whether the user has a cookie corresponding to the pop-up survey

routine. If no such cookie exists, then the routine assumes that the user has not

been presented with the survey in the last six months. On the other hand, if such a

cookie is stored within the user's system, the routine checks its contents to

specifically determine when the user, if at all, was last presented with a pop-up

survey. Either way, if it is determined that the user has been presented with the

survey in the last six months, then again, the routine returns a value at step 210

indicating that the survey is not to be popped. Conversely, if it is determined that the

user has not received the survey in the last six months, then the routine proceeds to

decision step 218. (Col. 4, lines 42-62). In addition, Smith, Jr. discloses wherein

acceptance of the on-line survey solicitation by the user results in presentation of an

on-line survey via the browser client (i.e., by selecting a particular banner, a network

user may be presented with a survey, ¶ 0124).

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to include Issuing by the user computer in association

with processing the received web page a request to an ad server for a block of data

comprising computer-readable instructions for presenting the on-line advertisement

via the browser client, sending, by the server in response to the issued request from

the user computer the block of data including computer-readable instructions for presenting the originally accessed on-line advertisement and the block of data further including additional computer readable instructions that facilitate decision-making steps for determining whether to present an on-line solicitation via the browser client in Smith, Jr. et al, as seen in de Ment, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

In addition, while Smith, Jr. et al. discloses using cookie data to indicate previous solicitations (paragraph 129), Smith, Jr., et al. does not expressly disclose using this cookie data to determine if the user should be presented the solicitation by accessing, on the user computer, a timestamp value indicative of a period of time that has passed since the online survey solicitation was previously presented by the browser client; and executing the additional computer-readable instructions if the timestamp value indicates passage of a period of time satisfying a prescribed wait period between consecutive presentations of the one line survey solicitation by the browser client on the user computer.

de Ment discloses accessing and analyzing cookie data of the user computer indicative of a period of time that has passed since the on-line survey solicitation was previously presented by a browser client and executing the additional computer readable instructions if the cookie values indicate passage of a period of time

satisfying the prescribed wait period between consecutive presentations of the on-line survey solicitation by the browser client on the user computer (See figure 3B, column 3, lines 25-35, column 4, lines 40-63, wherein cookie data is requested and analyzed to see timing (i.e. has the user taken the survey within the last six months). The timing in the cookie data is used to determine an elapsed time since the previous presentation and if the elapsed time exceeds a time period corresponding to the time parameter, the solicitation may be presented). Moreover, according to de Ment a timestamp can be used to ascertain whether a survey was taken (Col. 4, lines 42-62).

However, while de Ment does not expressly disclose that the cookie data includes a timestamp, both de Ment and Smith Jr., et al. disclose presenting a survey solicitation to a user via a browser client based on presentation criteria using cookie data to indicate previous solicitations. Smith Jr., et al. specifically discloses screening a user to ensure that that user is an appropriate candidate to be surveyed, such as by using cookie data. De Ment discloses utilizing on-line surveys in order to characterize users and gain knowledge from these users, as well as utilizing cookies and timeframe values to determine whether or not to serve a survey to a user. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the timeframes of de Ment in the survey screening criteria of Smith Jr., et al. since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did

separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Further, both de Ment and Smith, Jr. et al., disclose the use of cookie data. De Ment discloses utilizing on-line surveys in order to characterize users and gain knowledge from these users, as well as utilizing cookies and timeframe values to determine whether or not to serve a survey to a user. Examiner takes official notice that it is old and well known in the art that cookie data includes timestamps which indicate the time a user of a computer undertook an action. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include timestamps in the cookie data of de Ment, since using old and well known cookie timestamps in the cookie data of de Ment (this cookie data indicative of timeframe) would achieve the predictable results of measuring the timeframe of user activity.

With respect to Argument 2, the Examiner respectfully disagrees. Contrary to Appellant's assertion, the elements of claim 6 do not recite "storing a cookie indicating that a survey solicitation was presented on the user computer, or a need to limit repeated solicitations to take a survey or address such need by recording a timestamp indicating when a user was previously solicited to take a survey." Rather, claim 6 recites presenting the on-line survey solicitation thereby soliciting the user to take the on-line survey, generating, in association with the presenting step, cookie data including the timestamp value to indicate that the on-line survey solicitation was presented by the browser client; and sending the generated cookie data over a

computer network to the browser client, which is indeed taught by Smith Jr., et al in view of de Ment, as seen in the above rejection.

With respect to Argument 3, the Examiner respectfully disagrees. Smith, Jr. et al discloses the automated survey mechanism creating a banner, which contains a reference to a corresponding survey (paragraphs 122-124). As such, Smith, Jr. et al indeed teaches on-line survey solicitations (i.e., banners referencing a survey).

With respect to Argument 4, the Examiner respectfully disagrees. Contrary to Appellant's assertion, the elements of claim 11 do not recite "linking the survey questions to a product or service advertised in the on-line advertisement provided in the block of data downloaded from the ad server." Rather, claim 11 recites presenting the on-line survey solicitation as a pop-up window; and in response to activation of a link within the pop-up window, sending a web page to the browser client comprising questions regarding a product or service advertised in the on-line advertisement, which is indeed taught by the cited references, as seen in the above rejection.

With respect to Argument 5, the Examiner respectfully disagrees. Claim 17 is rejected based upon the same rationale of claim 1 since it the system claim corresponding to the method claim. Moreover, the claim elements initially downloaded web pages, and a subsequent request for an ad block by a user computer from an advertisement server, argued by Appellant, do not seem to be in the claim language.

With respect to Argument 6, the Examiner respectfully disagrees. Smith, Jr. et al. discloses wherein the online survey solicitation is presented as part of a campaign, wherein the frequency parameter has a value that is at least partially a function of an amount of time remaining in the campaign (See paragraphs 129-130, which discloses the frequency with which the online survey is displayed (number of times per campaign, number of times per user, etc.)). However, neither Smith, Jr. et al., nor de Ment expressly disclose referencing a look-up table that correlates a plurality of possible times remaining with corresponding possible frequency values. Winn discloses sampling rate and frequency algorithms/processes, and further discloses soliciting users only once for a specific survey (See column 3, lines 45-65, column 4, lines 10-20 and 30-41) and wherein the frequency parameter is determined by referencing a look-up table (See column 3, lines 50-65, and column 4, lines 29-40). Winn further discloses a marketing campaign (See column 4, lines 10-20, which discloses a survey project).

With respect to Argument 7, the Examiner respectfully disagrees. Smith, Jr. et al. and Winn disclose systems for soliciting a user to take an on-line survey and utilizing cookies and frequency values to determine whether or not to serve a survey to a user. Winn specifically discloses random number generation in the context of frequency selections. Further, Examiner took official notice that a URL includes numbers that indicate file locations to which the URL will link. Accordingly, it would have been obvious to one of ordinary skill in the art to include generating a random number; determining whether the random number falls within a set of numbers that

correspond to a the frequency with which the on-line survey solicitation is presented

via browser clients; and presenting the online survey solicitation based on the

determining step in the frequency parameters of Smith, Jr. et al, as seen in Winn,

since the claimed invention is merely a combination of old elements, and in the

combination each element merely would have performed the same function as it did

separately, and one of ordinary skill in the art would have recognized that the results

of the combination were predictable. Moreover, it would have been obvious to one

of ordinary skill in the art to include a URL having numbers that indicate file locations

to which the URL will link, which is old and well known, and to append the random

number generator to the URL in the system of Smith, Jr. et al, in view of de Ment

and Winn.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and

Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Andre Boyce/

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